IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In Re Application of:	Confirmation Number: 8269
John R. Sloop	Group Art Unit: 1615
Serial No.: 10/625,146	Examiner: Neil S. Levy
Filed: July 23, 2003	Docket No.: 141901-1010

For: Wild Animal Control Apparatus And Method

SECOND REPLY BRIEF

Mail Stop Appeal Brief-Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

The Examiner's Answer mailed December 22, 2009 has been carefully considered. In response thereto, please consider the following remarks.

AUTHORIZATION TO DEBIT ACCOUNT

It is not believed that extensions of time or fees for net addition of claims are required, beyond those which may otherwise be provided for in documents accompanying this paper. However, in the event that additional extensions of time are necessary to allow consideration of this paper, such extensions are hereby petitioned under 37 C.F.R. § 1.136(a), and any fees required therefore (including fees for net addition of claims) are hereby authorized to be charged to deposit account no. 20-0778.

REMARKS

The Examiner has provided in the Examiner's Supplemental Answer (ESA) various responses to arguments contained in Appellant's Appeal Brief. Although the Examiner's Answer has added an additional reference that was apparently left out of the previous Examiner's Answer, the substance of the rejections and the Examiner's positions have not changed. Accordingly, Appellant stands behind the arguments set forth in the Appeal Brief and First Reply Brief. In addition, Appellant addresses selected responses in the following.

I. STATUS OF THE CLAIMS

Claims 1, 27, and 28 stand finally rejected. No claims have been allowed. Claims 9 – 21 have been canceled. Claims 2 – 8 and 22 – 26 have been withdrawn. The final rejections of claims 1, 27, and 28 are appealed.

II. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

Claims 1, 27, and 28 stand rejected under 35 U.S.C. §112, first paragraph for allegedly failing to comply with the written description requirement. Claims 1, 27, and 28 also stand rejected under 35 U.S.C. §112, second paragraph for allegedly being indefinite for failing to particularly point and distinctly claim the subject matter which Appellant regards as the invention. Claim 1, 27, and 28 further stand rejected under 35 U.S.C. §102(b) or in the alternative under 35 U.S.C. §103(a) over U.S. Patent Number 5,674,518 ("*Fajt*").

III. ARGUMENTS

A. Rejections Under 35 U.S.C. §112, First Paragraph

1. Claims 1, 27, and 28 are Allowable – "Non-Target" Animals

As previously argued, this rejection has no merit for at least the reason that the claims do not preclude other "non-target" animals from consuming the control apparatus. The pending claims only require that a "target wild animal" and a "wild animal" be enticed and subdued. Consequently, regardless of whether the claimed invention reduces the likelihood of a "non-target" animal ingesting and being subdued, this is not a requirement of claims 1, 27, or 28 and thus is not a valid reason to issue a 35 U.S.C. §112 rejection.

2. Claims 1, 27, and 28 are Allowable – Subduing the Target Animal

As previously indicated, the specification clearly discloses and explains this disputed subject matter in multiple of places, thereby fulfilling the requirements of 35 U.S.C. §112. In addition Appellant notes the Examiner's argument that "[t]he specification does not present exemplification of effectiveness to subdue one species, but not harm another" (ESA, page 6, line 3) is not correct. As clearly evident, the Examiner is importing requirements into the claims in an attempt to support an improper 35 U.S.C. §112 rejection. There is ***no*** requirement in claims 1, 27, or 28 that the subduing agent ***only*** subdues one species. The Examiner is clearly attempting to confuse the issue to support this improper rejection.

In the same light, the Examiner argues that "[t]he metal subduing agents were not presented in any shape, form, or amount, in connection with any specific trigger material and meat or other attractant material to enable one of ordinary skill in the art to practice the claimed invention" (ESA, page 6, line 8). Again, nowhere do claims 1, 27, or 28 require a "metal subduing agent" as argued by the Examiner. As indicated in the Response to Restriction filed October 18, 2007, the subduing agent elected (for searching purposes only) is "any agent that

may be configured to cause an energy release." Further, as one cannot "over subdue" a target animal, the description in the Specification is clearly sufficient to fulfill the requirements of 35 U.S.C. §112.

Similarly, regarding the Examiner's argument that "[t]he specification identifies subduing agents [0025], only as metal, drug, or percussion or chemical reactants, or sponges, not further exemplified, defined or identified except for Na, K or Li [0036], stated to result in energy release, but not explained as to how this leads to subduing" (ESA page five, line 17), Appellant disagrees. As previously argued, one of ordinary skill in the art would **unquestionably** understand how a "bullet, blank cartridge, or small explosive device" (paragraph [0028]) would subdue a target animal. As clearly illustrated herein (and in the previously submitted Appeal Brief and Reply Brief, this rejection of claims 1, 27, and 28 under 35 U.S.C. §112 is improper.

3. Claims 1, 27, and 28 are Allowable – Metal Trigger and Attractants

The Examiner further argues "Appellant states... that the trigger is a metal, but there is no such disclosure in the Specification. Neither is it evident how the sugar or meat, the only specified attractants one would incorporate in the wild animal control device, would be wrapped around or naturally adhere to the surface of the trigger" (ESA page 6, line 11). Appellant again disagrees. First, Appellant merely indicated that metal is a material that a skilled artisan would understand as a possible component in a trigger. However, regardless of whether the Specification provides explicit explanation of using a metal trigger, one of ordinary skill in the art would **unquestionably** understand that a metal will dissolve in an acidic solution.

Similarly, there is absolutely no question that the skilled artisan would understand that the trigger could be inserted into raw meat, coated with sugar, or otherwise be adhered to the attractant. As the Examiner appears to be defining "one of ordinary skill in the art" to be someone who would not understand how "sugar or meat would be wrapped around or naturally

adhere to the surface of the trigger" (id), the Examiner appears to be "creating" arguments to support an improper 35 U.S.C. §112 rejection. For at least these reasons, it is clear that the rejections under 35 U.S.C. §112, first paragraph are improper and should be withdrawn.

B. Rejections Under 35 U.S.C. §112, Second Paragraph

Additionally, the Examiner repeats arguments cited above to allege that claims 1, 27, and 28 stand rejected under 35 U.S.C. §112, second paragraph because the claims "present[] no distinct coupling agents or means as to how the subduing agent is coupled to the trigger or what the trigger is" (ESA page 8, line 4). Again, Appellant disagrees. As clearly indicated above, there is no ambiguity in the claims or specification. As a nonlimiting example, claim 1 describes an attractant, a trigger, and a subduing agent, which are all clearly described in the specification (in at least the sections cited above and in the previously submitted Reply Brief). Consequently, any rejection under 35 U.S.C. §112, second paragraph is also improper.

C. Rejections Under 35 U.S.C. §102(b) or §103(a)

The Examiner continues to argue that *Fajt* anticipates claims 1, 27, and 28 and additionally adds *Getachew* as evidence to support the rejection. More specifically, the Examiner argues that the "gel layer 2" anticipates (or renders obvious) the "trigger" of claims 1 and 27. The Examiner uses *Getachew* to apparently support the argument that fish generally have low stomach pH.

However, this rejection fails to meet the requirements of 35 U.S.C. §102 and §103 for at least the reason that claim 1, for example, recites "***a trigger covered by a portion of the attractant, the trigger adapted to dissolve in an environment having a predetermined pH***." As clearly illustrated, the trigger dissolves in environments having a predetermined pH. However, the "gel layer 2" of *Fajt* "prevent[s] leaching [sic] of the toxic formulation into the

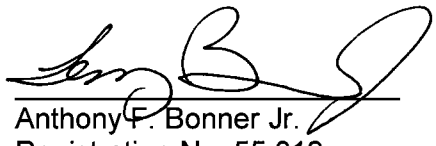
aqueous environment" (column 2, line 24). Nowhere in *Fajt* is there any indication that "gel layer 2" dissolves in an environment with a predetermined pH. The fact that fish generally have a low stomach pH does nothing to prove that the "gel layer 2" dissolves in an environment with a predetermined pH, as recited in claims 1, 27, and 28. Consequently *Fajt* cannot anticipate or render obvious claims 1 or 27.

Further, *Fajt* cannot anticipate claim 28, for at least the reason that *Fajt* **clearly** discloses the use of poison. While the Examiner attempts to argue "KOH can be considered to not be a poison" (ESA page 9, line 17), the Examiner provides absolutely no support of this position. In fact, *Fajt* clearly states "[t]his invention concerns an improvement in the control of fish populations by taking advantage of the feeding habits of undesirable species of fish to selectively poison them" (emphasis added; column 1, line 10). Claim 28, by contrast clearly and unambiguously precludes poison, by reciting "The wild animal control apparatus of claim 27, wherein the energy release device subdues the wild animal without poisoning the wild animal." For at least this reason, the Examiner's rejections are improper and the present application should be allowed.

CONCLUSION

In summary, it is Appellant's position that the pending claims are patentable over the applied cited art references and that the rejection of these claims should be withdrawn. Appellant therefore respectfully requests that the Board of Appeals overturn the Examiner's rejection and allow the pending claims.

Respectfully submitted,

By: 

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